

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
NPCR, INC. d/b/a NEXTEL PARTNERS)	DA 03-1959
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Virginia)	
_____)	

**REPLY COMMENTS OF
NPCR, INC. d/b/a NEXTEL PARTNERS**

NPCR, INC. d/b/a NEXTEL PARTNERS

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Date: July 21, 2003

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SUMMARY

Two commenters, NTELOS and Verizon, filed comments on Nextel Partners' Petition for Designation as an Eligible Telecommunications Carrier ("ETC") in this proceeding. Neither of the two commenters requests that Nextel Partners' Petition be denied, and neither commenter presented any showing that calls into question Nextel Partners' ability and commitment to meet the statutory criteria for designation as an ETC in its requested service area. Accordingly, the merits of Nextel Partners' Petition in this proceeding are not substantively opposed.

Both commenters focused on policy issues of general application, and both seek to stay Nextel Partners' ETC designation pending the outcome of Joint Board proceedings considering aspects of Universal Service Funding and competitive ETC status. However, the generalized policy arguments presented by the commenters are irrelevant to the instant proceeding, which is concerned only with the limited questions of (i) whether Nextel Partners' Petition has satisfied the statutory criteria for ETC eligibility and (ii) whether it is in the public interest to grant ETC status to Nextel Partners in the requested rural telephone company study areas.

No stay pending the outcome of any Joint Board proceeding is warranted, both because Nextel Partners will in any event be subject to the outcome of any Joint Board recommendations adopted by the Commission, and because the Commission must follow existing law and currently-applicable rules to decide Nextel Partner's Petition, rather than basing its decision on the possible outcome of future rulemakings.

Nextel Partners' has demonstrated that it meets all of the statutory criteria for designation as an ETC in its requested service area in Virginia, and in addition that the public interest favors grant of its Petition with respect to rural telephone company study areas. Accordingly, Nextel Partners respectfully asks that the Commission grant its Petition without further delay.

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**REPLY COMMENTS OF
NPCR, INC. d/b/a NEXTEL PARTNERS**

NPCR, Inc. d/b/a Nextel Partners (“Nextel Partners”), by its undersigned counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the “Act”), hereby submits its “Reply Comments” in response to Comments filed on July 14, 2003 by NTELOS, Inc. (“NTELOS”) and Verizon.¹ Neither of these comments contains any facts or argument that warrants denial of Nextel Partners’ Petition for Designation as an Eligible Telecommunications Carrier (“ETC”). In fact, neither commenter requests that Nextel Partners’ Petition be denied – each commenter instead requests that this proceeding be stayed pending resolution of other issues. Both sets of comments primarily recycle policy-oriented arguments made in other proceedings.² They merely attach prior filings opposing other ETC petitions. Neither commenter responds directly to the specific representations made in Nextel Partners’

¹ Although Verizon’s comments are styled as an “Opposition,” they will be referred to as “comments” herein.

² NTELOS’ Comments attach the June 4, 2002 Comments of the “Virginia Rural Telephone Companies” (“VRTC”) in the Virginia Cellular LLC (“Virginia Cellular”) proceeding; and Verizon’s Comments attach the June 30, 2003 Opposition of Verizon to AllTel Communications, Inc.’s (“AllTel’s”) ETC petition.

Petition. This tactic of filing unrelated and unresponsive comments is wasteful of the Commission's valuable time and resources.

To the extent that each of the commenters may have generalized policy issues to raise concerning the overall process of designating ETCs, or concerns about the particulars of Virginia Cellular's or Alltel's Virginia petitions, the instant proceeding is not the proper forum – and “commenting” on Nextel Partners’ petition is not the proper vehicle -- for doing so.³ The instant proceeding is properly focused on whether Nextel Partners’ Petition meets the statutory criteria for designation as an ETC set forth in Section 214(e) of the Act. The commenters do not demonstrate that Nextel Partners has failed to meet the statutory criteria. Accordingly, the Commission should grant Nextel Partners’ Petition without delay.

I. Comments of NTELOS

NTELOS does not ask the Commission to deny Nextel Partners’ Petition for Designation, but only to stay this proceeding pending consideration of various policy issues that NTELOS believes to be pertinent to the overall functioning of the Universal Service Fund (“USF”). In the discussion preceding the attached VRTC comments, NTELOS claims (i) that the USF funding mechanisms might fail if additional competitive ETCs are designated in rural areas;⁴ (ii) that Nextel Partners has not carried its burden of proof concerning its coverage area and that it “provides all of the requisite features of a universal service offering;”⁵ and (iii) that the FCC

³ The policy issues raised in the pleadings NTELOS and Verizon attach to their comments have already been answered by Virginia Cellular and AllTel. *See* Reply Comments of Virginia Cellular LLC, CC Docket No. 96-45 (filed June 11, 2002); Reply Comments of AllTel Communications, Inc., CC Docket No. 96-45, DA 03-1881 (filed July 14, 2003). In order to preserve Commission resources, Nextel Partners will refrain from discussing these irrelevant issues again in this proceeding.

⁴ NTELOS Comments at 3-4.

⁵ *Id.* at 4.

should “consider the effect in the wireless industry” of granting Nextel Partners’ petition for designation.⁶ NTELOS’ assertions have no merit.

A. No Stay of this Proceeding is Warranted

NTELOS claims that the federal USF mechanisms are “in danger of failing” in their core mission of assisting telephone companies in high-cost areas,⁷ and requests that the Commission stay Nextel Partners’ Petition (and the Petition of any other actual or potential Virginia ETC), “until the Joint Board and Commission have had the opportunity to consider the comments and address the issues.”⁸ There is no factual or logical basis shown for NTELOS’ claims concerning the imminent collapse of USF mechanisms. Nor has NTELOS presented a sufficient basis for staying the instant proceeding.

Contrary to NTELOS’ assertions, speculations about future possibilities and assertions about potential problems with the USF cannot form a proper basis for a stay of the instant proceeding. As a practical matter, since Nextel Partners and all other ETC petitioners must in any event comply with Commission Orders that adopt Joint Board recommendations, there is no logic in holding ETC designation proceedings in abeyance pending the outcome of Joint Board proceedings. This was clearly recognized by the Commission in its most recently-released (July 14, 2003) Order in Docket 96-45, in which the Commission stated:

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.*

We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost universal service support in competitive areas could potentially impact, among other things, the support that competitive ETCs may receive in the future. *As such, we recognize that any grant of competitive ETC status pending completion of that proceeding will be subject to whatever rules are established in the future.* We intend to proceed as expeditiously as possible to address the important and comprehensive issues that are being raised.⁹

Moreover, even if the rules and policies concerning designation of ETCs undergo some changes in the future, the Commission is bound to abide by *existing* rules and policies in all proceedings,¹⁰ including ETC designation proceedings. In fact, the Commission has already rejected the very types of arguments raised by NTELOS on the basis that "these concerns are beyond the scope of this Order, which designates a particular carrier as an ETC" under existing rules.¹¹ The Commission is committed to resolving ETC designation petitions in a six-month time frame, recognizing that "excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas."¹² Staying the instant proceeding would "unnecessarily delay resolution of this matter well beyond the Commission's informal [six month] commitment,"¹³ and is entirely unwarranted.

⁹ *In the Matter of the Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration in CC Docket No. 96-45 at ¶ 34 (released July 14, 2003) (emphasis supplied).

¹⁰ *See CSRA Cablevision, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 572 at ¶ 6 (1974) ("Under the Administrative Procedure Act and the relevant judicial decision, the Commission is bound to follow its existing rules until they have been amended pursuant to the procedures specified by that act.")

¹¹ *Federal-State Joint Board on Universal Service; Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24393, 24405-06 (2002).

¹² *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000) ("Twelfth Report and Order").

¹³ *See Federal-State Joint Board on Universal Service; RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service*

NTELOS argues that there are six (unnamed) wireless companies already competing with NTELOS' own wireless operations in Waynesboro and Daleville, Virginia – and claims, without any apparent basis, that each of those unnamed “six carriers” could “make the same assertions that Nextel Partners makes in its petition.”¹⁴ NTELOS goes on to claim that if *all of* the unnamed wireless carriers applied for (and presumably received) ETC status, it *might* have adverse “long-term implications” for the size of the USF fund. NTELOS next represents that “OPASTCO has estimated that if all CMRS providers nationwide were to apply for and receive ETC status, the annual funding level of the High-Cost program would increase by approximately \$2 billion.”¹⁵ Presumably, NTELOS is attempting to argue that if Nextel Partners is granted ETC designation in Virginia, then *all* CMRS providers *everywhere* might seek and obtain ETC designation, possibly resulting in “drastic cuts” in USF funding.¹⁶

Speculation as to what other wireless providers may or may not choose to do in the future is not relevant to this proceeding, which involves the consideration of whether a *particular* CMRS provider—Nextel Partners—should be designated as an ETC in various study areas in Virginia. The outcome of this proceeding turns on whether Nextel Partners has made the requisite showings in its Petition, and whether, with regard to study areas of rural telephone companies (“RTCs”), the public interest would be served by the grant of ETC status.

Nextel Partners' primary business focus is the provision of services in mid-sized and tertiary markets.¹⁷ This uncommon business focus makes Nextel Partners a natural and high-

Area in the State of Alabama, 17 FCC Rcd 23532, 23535, n.27 (2000) (“*RCC Holdings Order*”).

¹⁴ NTELOS Comments at 3.

¹⁵ NTELOS Comments at 3.

¹⁶ NTELOS Comments at 3. Verizon raises this same argument in its comments, *see* Verizon Comments at 2, 6.

¹⁷ *See* **Exhibit 2** hereto, Excerpts from Nextel Partners, Inc.'s publicly filed Form

priority candidate for ETC designation. Not *every* CMRS carrier is interested in pursuing an active course of providing the required services for ETC designation and building out a network in high-cost areas, and NTELOS provides no evidence to the contrary.

B. Nextel Partners Has Demonstrated that It Meets All of the Statutory Criteria For Designation as an ETC in Virginia

Nextel Partners' Petition as submitted to the Commission meets each of the requirements set forth in Part 54 of the Commission's Rules, and *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*.¹⁸ In this Public Notice, the Commission sets forth four elements of an ETC designation petition¹⁹ and an additional requirement of a "description of the geographic service area" if the petitioner is not a RTC. Nextel Partners has provided the requisite certifications, a description of its advertising practices and a description of the areas for which it seeks ETC designation.

NTELOS' claim that Nextel Partners has made only "conclusory" and "unsupported" statements²⁰ in its Petition is not accurate. All of Nextel Partners' assertions are supported by a declaration given under penalty of perjury²¹ – and, as noted, Nextel Partners' Petition presents

10-K Annual Report at 4. While Nextel Partners, Inc. serves the secondary and tertiary markets, Nextel Communications, Inc., a separate publicly traded company, serves the primary markets.

¹⁸ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, FCC 97-419, 12 FCC Rcd 22947 (December 29, 1997) ("*Procedures for FCC designation of Eligible Telecommunications Carriers*").

¹⁹ Specifically, Nextel Partners showed: (i) that it is not subject to the jurisdiction of the Virginia State Corporation Commission; (ii) that it will provide all of the services designated for support by the Commission pursuant to Section 254(c) of the Act; (iii) that it will provide the supported services over its own facilities; and (iv) how it will advertise the availability of the supported services using media of general distribution.

²⁰ NTELOS Comments at 4.

²¹ See NTELOS Comments at 4. Nextel Partners' Petition attached a declaration against penalty of perjury made by its Vice-President and General Counsel, Donald J. Manning. This declaration specifically affirms that Nextel Partners meets all of the statutory and regulatory

facts demonstrating that it meets all of the statutory criteria for designation as an ETC. The Commission has already considered and rejected the argument that “conclusive proof” is required for all of the representations made in a petition for ETC designation.²²

In particular, contrary to NTELOS’ claims, Nextel Partners is not required to “prove” its coverage in the areas for which it seeks designation, but merely to describe the area in which it intends to provide the supported services.²³ Despite NTELOS’ “skepticism” as to Nextel Partners’ coverage, Nextel Partners already provides wireless telecommunications service in much of rural Virginia,²⁴ as depicted by Nextel Partners’ coverage map submitted as **Attachment 3** to its Petition. In accordance with applicable law, Nextel Partners will furnish “communications services upon reasonable request”²⁵ within the areas for which it seeks designation as an ETC. Universal service funding will provide economic support for Nextel Partners’ wireless network to provide quality service in high cost areas where it operates under license. Nextel Partners will use universal service funds in an ongoing effort to provide quality wireless services throughout the service area for which it seeks designation as an ETC. Apart from this showing and commitment, no additional “proof” is required of Nextel Partners’ coverage in Virginia.

requirements for designation as an ETC. See Nextel Partners’ Petition, **Attachment 5**.

²² See, e.g., *In the Matter of Federal State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, 17 FCC Rcd 24493 at ¶ 15 (2002), (“*Cellular South Order*”).

²³ See *Procedures for FCC Designation of Eligible Telecommunications Carriers*.

²⁴ The Commission’s ULS database contains a record of the many 800 MHz Economic Area (“EA”) and site-based licenses pursuant to which Nextel Partners offers its services in Virginia. The licenses are held by wholly-owned subsidiaries of Nextel Partners Operating Corp., which also owns 100% of NPCR, Inc.

²⁵ 47 U.S.C. § 201(a).

Likewise, Nextel Partners is not required to demonstrate prior to ETC designation that it *already* provides all of the supported services throughout its requested service area.²⁶ In fact, this would be impossible, since only an ETC can participate in the Lifeline and Link-Up programs.²⁷ As a consequence, NTELOS' insistence that Nextel Partners show "that it provides all of the requisite features of a universal service offering"²⁸ is without merit.

NTELOS also claims that Nextel Partners "bears a higher burden" of proof "under the statute" to be certified to receive universal service funding in RTC study areas.²⁹ NTELOS does not cite to any statutory provision to support this assertion. Section 214(e)(6) of the Act states, in pertinent part:

Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.³⁰

The foregoing provision does not indicate a heightened burden of proof for designation in RTC study areas. It merely requires that a public interest showing be made. Nextel Partners makes

²⁶ Although a carrier may not necessarily provide all of the supported services at the time it seeks ETC status, it may "make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service." *See Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168, 15178 (2000).

²⁷ *See generally* 47 C.F.R. Part 54, Subpart E (Universal Service Support for Low Income Consumers). These supported services need only be offered *after* designation as an ETC, upon receipt of USF support. The toll blocking service is intended to benefit low income consumers enrolled in the Lifeline/Link-Up program, and need not be provided before Nextel Partners is a Lifeline participant.

²⁸ NTELOS Comments at 4.

²⁹ *Id.*

³⁰ 47 U.S.C. § 214(e)(6).

this public interest showing in its Petition,³¹ and NTELOS does not present any facts or argument that refutes Nextel Partners' public interest showing.

C. NTELOS' Request that the Commission Review the Effect in the Wireless Industry of Granting Nextel Partners' Petition is Misguided

NTELOS calls for the Commission to scrutinize the future effect on the wireless industry of designating Nextel Partners as an ETC. NTELOS claims that there is no benefit to designating Nextel Partners as an ETC, alleging that Nextel Partners has nothing new to offer, and the designation would create an "uneven [playing] field" among wireless carriers.³²

NTELOS' assertion that designating Nextel Partners as an ETC will yield nothing new or different (because there are already wireless carriers providing service in Nextel Partners' service area) is incorrect.³³ Nextel Partners will provide USF supported services over its wireless network and meet "reasonable requests" for service within its service area.³⁴ This is new and different when compared with other competitive wireless carriers, since they are not ETCs. Nextel's status as an ETC within its designated service area will benefit Virginia consumers in a variety of ways: the rural consumer will realize significant gains in customer choice, innovative services and new technology. For example, present RTC customers that have limited local calling areas will be pleased to learn that Nextel Partners' local calling area is much larger than local calling areas of rural ILECs – in fact, it includes the *entire state* of Virginia. Not only do Nextel Partners customers realize the inherent benefits of mobility, but also Nextel Partners does not impose any "roaming" charges for service anywhere on the nationwide Nextel network.

³¹ See Nextel Partners' April 23, 2003 Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia, Section IV.

³² NTELOS Comments at 4-5.

³³ NTELOS Comments at 5.

³⁴ See *generally* Nextel Partners Petition for Designation as an Eligible

Nextel Partners offers other innovative services such as “Nextel Direct Connect Service,” a significant technology that allows the consumer to use his or her wireless phone as a “walkie-talkie” on a push-to-talk basis to communicate with other Nextel Partners users without consuming cellular airtime. In fact, Nextel Partners’ service areas in rural Virginia were one of the first regions in the country to experience the “roll-out” of “Nextel Nationwide Direct Connect,” which allows push-to-talk functionality between Nextel users anywhere in the domestic United States without use of cellular airtime minutes. Nextel Partners’ service also includes many “vertical switch features” such as Call Forwarding, Three-Way Calling and Call Waiting as an inherent part of its service: these are features for which wireline carriers typically charge extra. Moreover, Nextel Partners offers the choice of a variety of different rates and service plans, some of which include long distance, data messaging, voicemail, caller ID and other valuable optional services.

There is no reason to assume that grant of ETC status for Nextel Partners will create an uneven playing field among existing wireless carriers, and NTELOS has not proposed a shred of evidence to support its thesis. At least one carrier providing wireless services, NTELOS itself, *is already an ETC*. So failing to grant ETC status to other wireless providers merely preserves the incumbent’s advantage. As to other competitive wireless carriers, it is impossible to assess the impact of grant of Nextel Partners’ Petition, since the wireless carriers have not been identified; and it is impossible to gauge their business plans, or whether any of them focus more than tangentially on RTC study areas.

Accordingly, even if the Commission were to take into account the possible effect of granting Nextel Partners’ Petition on the wireless industry in Virginia in the context of a public

interest analysis for RTC study areas, NTELOS has given the Commission absolutely nothing to work with, other than a bare request that the Commission look into the matter. Such a request, without a meaningful evidentiary showing to support it, or any presumption of validity, is insufficient to warrant a stay in this proceeding.

**D. The Comments of VRTC on Virginia Cellular's ETC Petition Are
Inapplicable to this Proceeding**

The VRTC comments NTELOS attaches as “Exhibit A” to its comments are directed against a different petitioner, in a different proceeding, with entirely different facts, and in a different timeframe. They are entirely inapposite. Although NTELOS claims that Virginia Cellular’s petition raised “precisely the same” issues as Nextel Partners’ Petition,³⁵ NTELOS does not offer any facts to show that Virginia Cellular’s petition is similar to Nextel Partners’ Petition. Nor does NTELOS attempt *in any way* to show how the VRTC comments relate to specific representations made by Nextel Partners in its Petition.

Even the most cursory examination reveals that the VRTC Comments have nothing to do with Nextel Partners’ Petition. For example, the VRTC’s Comments complain that Virginia Cellular does not provide digital service or E911 services.³⁶ Nextel Partners provides *only* digital service and, as specifically noted in its Petition, also *presently* provides E911 services in Virginia.³⁷ In addition, Virginia Cellular sought designation for a different group of RTC study areas than the study areas requested by Nextel Partners.³⁸ Virginia Cellular also asks for

³⁵ *Id.* at 2.

³⁶ *See* NTELOS Comments, Exhibit A at 10.

³⁷ *See* Nextel Partners Petition at 3-4.

³⁸ For example, although the VRTC comments include specific details and argumentation purportedly applicable to Virginia Cellular’s Petition concerning the study areas of (i) Highland Telephone Cooperative; (ii) MGW Telephone Company; and (iii) Buggs Island Telephone Cooperative, these are not study areas for which Nextel Partners has requested

redefinition of partially-covered RTC study areas, something that Nextel Partners did not request in its Petition.

In sum, comments submitted by other commenters in response to a different petition, in a different proceeding, involving a different carrier with different capabilities, applying for different study areas, are irrelevant to the Commission's consideration of Nextel Partners' Petition in this proceeding.

II. Comments of Verizon

The *only* point that Verizon attempts to make in its one-paragraph "Opposition"³⁹ is that "the growing number of petitions for ETC designation in non-rural areas threatens to unravel the access charge reform established by the CALLS Order."⁴⁰ Verizon does not ask that Nextel Partners' Petition be denied, only that it be stayed pending resolution of "the issues raised in the Joint Board portability proceeding."⁴¹

designation as an ETC. **Exhibit 1** attached hereto compares the Virginia RTC study areas requested by Nextel Partners with those requested by Virginia Cellular in its petition, and demonstrates that the two petitions are requesting entirely different service territories.

³⁹ Verizon also uses the tactic of filing for its comments in this proceeding a short preface, attaching as an exhibit comments that were already filed in another ETC designation proceeding, involving AllTel Communications' petition for designation in Virginia. AllTel Communications' petition, however, concerns different RTC study areas than Nextel Partners' petition. See **Exhibit 1**, attached hereto.

⁴⁰ Verizon Comments at 1.

⁴¹ *Id.*

Verizon's request for a stay is misguided, and fails to take into account the clear language of the Act with respect to designation of ETCs in non-rural areas. The Act states in pertinent part:

Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and *shall, in the case of all other areas*, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1) [*viz.*, Section 214(e)(1)].

47 U.S.C. § 214(e)(6) (emphasis supplied). The Act clearly mandates that the Commission must designate requesting carriers as ETCs in non-rural areas upon a showing that the requesting carrier meets the statutory criteria for ETC designation set forth in Section 214(e)(1) of the Act. As held by the Common Carrier Bureau in granting Verizon Wireless ETC status in Delaware, Section 214(e)(6) of the Act establishes that the designation of an additional non-rural ETC that has shown compliance with the eligibility requirements of Section 214(e)(1) of the Act “is consistent *per se* with the public interest. The carrier need make no further showing to satisfy this requirement.”⁴²

Verizon does not even attempt to raise any issue as to whether Nextel Partners has made the requisite showings under Section 214(e)(1) of the Act; nor does Verizon challenge Nextel Partners' qualification to be an ETC in either RTC study areas or non-rural areas. Verizon wants the Commission to ignore its statutory mandate based on the possibility that some change may be imposed as a result of a Joint Board proceeding. However, as discussed above, the Commission is bound by its rules, and must act according to the *existing law*, and not on the basis of what the law may or may not be in the future. In particular, the Commission cannot reasonably act on the

⁴² *Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 16 FCC Rcd 39, 45 (2000).

basis of what an interested party *speculates* might happen in the future.

III. Conclusion

Neither of the two commenters in this proceeding has proposed that the Commission deny Nextel Partners' Petition for Designation as an ETC, nor has either commenter demonstrated that Nextel Partners does not meet the statutory criteria for ETC designation, or that such designation is not in the public interest for the RTC study areas. Accordingly, Nextel Partners' Petition is essentially unopposed on its merits. NTELOS and Verizon concerned themselves principally with larger policy issues that are beyond the scope of this proceeding. Despite the assertions of the commenters, there is no reason to delay granting Nextel Partners' Petition. The Commission must decide its cases based on applicable law as it currently exists.

Because Nextel Partners meets the statutory requirements for eligibility for designation as an eligible telecommunications carrier, and because it is in the public interest to grant Nextel Partners ETC status in the requested RTC study areas, Nextel Partners requests that the Commission promptly grant this Petition.

Respectfully submitted,

NPCR, INC. d/b/a NEXTEL PARTNERS

By _____ [signed]
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Date: July 21, 2003

SERVICE LIST

The following persons are served with a true and complete photocopy of Nextel Partners'

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[signed]
Ronald J. Jarvis

EXHIBIT 1

Comparison of the RTC Study Areas Requested by Nextel Partners, Virginia Cellular and AllTel

NEXTEL PARTNERS	VIRGINIA CELLULAR	ALLTEL
Amelia Tel Corp.		Amelia Tel Corp.
Citizens Tel Coop		
Ntelos, Inc.	Ntelos, Inc.	
North River Tel Coop	North River Tel Coop	
New Hope Tel Co - VA	New Hope Tel Co - VA	
Pembroke Tel Coop		
Peoples Mutual Tel		Peoples Mutual Tel
Roanoke & Botetourt		
Shenandoah Tel Co	Shenandoah Tel Co	
Virginia Tel Co.		
Verizon South VA		Verizon South VA
New Castle Tel Co.		
	Highland Telephone Coop	
	Mountain Grove- Williamsville Tel Co. (MGW)	
		Buggs Island Tel. Coop
		Burke S. Garden Tel. Co.
		Central Tel. Co
		Scott County Tel. Coop
		United Inter-Mountain Tel.

EXHIBIT 2

**Excerpts from Nextel Partners, Inc.'s
Publicly filed Form 10-K Annual Report**

10-K 1 a2106128z10-k.htm 10-K

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

(Mark One)

- ☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2002

OR

- ☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number: 000-29633

NEXTEL PARTNERS, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

91-1930918
(I.R.S. Employer Identification No.)

**4500 Carillon Point,
Kirkland, Washington 98033,
(425) 576-3600**
(Address of principal executive offices, zip code
and telephone number, including area code)

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:
None

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:
Class A Common Stock, \$0.001 par value

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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PART IV

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PART I

Item 1. Business

Overview

We provide digital mobile communications services using the Nextel brand name in mid-sized and tertiary markets throughout the United States. We offer digital cellular services; Direct Connect® (the long-range digital walkie-talkie service); wireless data services, including email; text messaging; and Nextel Online®, which provides wireless access to the Internet and an organization's internal databases and other applications. We hold licenses for wireless frequencies in markets where over 53 million people, or Pops, live and work. We have constructed and operate a digital mobile network compatible with the digital mobile network constructed and operated by Nextel Communications, Inc. ("Nextel") in targeted portions of these markets, including 13 of the top 100 metropolitan statistical areas and 57 of the top 200 metropolitan statistical areas in the United States ranked by population. Our combined "Nextel Digital Mobile Network" constitutes one of the largest fully integrated digital wireless communications systems in the United States, covering 197 of the top 200 metropolitan statistical areas in the United States at the end of 2002. As of December 31, 2002 we had approximately 877,800 digital handsets in service in our markets.

Our relationship with Nextel was created to accelerate the build-out and expand the reach of the Nextel Digital Mobile Network. In January 1999, we entered into a joint venture agreement with Nextel WIP Corp. ("Nextel WIP"), an indirect wholly owned subsidiary of Nextel. Nextel, through Nextel WIP, contributed to us cash, licenses for wireless frequencies and granted us the exclusive right to use the Nextel brand name in exchange for ownership in us and our commitment to build out our compatible digital mobile network in selected markets and corridors, in most cases adjacent to operating Nextel markets. As of December 31, 2002, Nextel WIP owned 31.6% of our common stock and is our largest stockholder. By the end of 2002, we had successfully built all of the markets we were initially required to build under our 1999 agreement with Nextel. Since 1999 we have exercised options to expand our network into additional markets. By December 31, 2002, we had completed the construction of all but two of these additional markets, both of which we expect to complete and launch in the first half of 2003. Through our affiliation with Nextel our customers have seamless nationwide coverage on the entire Nextel Digital Mobile Network.

We offer a package of wireless voice and data services under the Nextel brand name targeted primarily to business users. We currently offer the following four services, fully integrated and accessible through a single wireless handset:

- digital mobile telephone service, including advanced calling features such as speakerphone, conference calling, voice-mail, call forwarding and additional line service;
- Direct Connect, sometimes referred to as the long-range walkie-talkie feature, which allows customers in the same geographic region to contact each other instantly, on private one-to-one calls or on group calls involving up to 100 customers simultaneously;
- two-way messaging, which allows customers to receive and send short numeric and text messages from their handset; and
- Internet services, marketed as Nextel Online, which provide customers with Internet-ready handsets access to the World Wide Web and web-based applications such as email, address books, calendars and advanced